

Message Text

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PAGE 01 STATE 165882
ORIGIN STR-04

INFO OCT-01 IO-13 ISO-00 FEA-01 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 EB-07 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05
SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01
/089 R

DRAFTED BY STR/MPOMERANZ:JEH
APPROVED BY STR/MPOMERANZ/WBKELLY,JR
OMB:LHAUGH
LABOR:GWHITE/RSCHULMAN
TREASURY:WBARREDA/JSCHOTT
AGRIC:GWHITE/JBENSON
EB/ITP/STA:JSPIRO
EB/ITP/OT/STA:GWHITE
COMMERCE:MPRUIETT/KKUWABARA
DOD:JDARLING/RBOOTON
-----081102 160123Z /65
P 152252Z JUL 77
FM SECSTATE WASHDC
TO USMISSION GENEVA PRIORITY

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USMTN

E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: INSTRUCTIONS FOR PLURILATERAL MEETING ON GOVERN-
MENT PROCUREMENT (WEEK OF JULY 18)

REF: (A) MTN GENEVA 5290 (B) STATE 86798

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PAGE 02 STATE 165882

1. WE HAVE REVIEWED THE REVISED (JUNE 27) TEXT OF
CANADIAN DRAFT AND FIND THAT THE SECTIONS ON NATIONAL
TREATMENT/NON-DISCRIMINATION AND TECHNICAL SPECIFICATIONS
ARE CONSISTENT WITH U.S. POSITIONS. THESE SECTIONS ARE
ALSO CONSISTENT WITH OUR VIEW THAT, LIKE ALL OTHER PARTS
OF THE CODE, THEY STAND INDEPENDENTLY OF ANY OTHER MTN
COMMITMENTS. YOU MAY WISH TO COMPLIMENT THE CANADIANS FOR

HAVING REVISED THE EARLIER TEXT ON NATIONAL TREATMENT/
NON-DISCRIMINATION SO AS TO REMOVE THE REFERENCES TO GATT
ARTICLES WHILE STILL MAINTAINING OUR COMMON NEGOTIATING
OBJECTIVES.

2. OUR REVIEW OF THE NEW CANADIAN DRAFT HAS NOT BEEN
LIMITED TO THE SUBJECTS TREATED IN PARA. 1. THE FOLLOWING
COMMENTS ON THE OTHER PARTS OF THE DRAFT ARE PROVIDED TO
ENABLE THE DEL TO DISCUSS THESE BILATERALLY WITH THE
CANADIANS AND FOR PURPOSES OF FUTURE GUIDANCE:

A. SCOPE AND COVERAGE, PARA. (A) -- WE ARE PUZZLED
AND CONCERNED BY THE BRACKETED LANGUAGE ON LINES 2 AND 3.
IF EITHER CLAUSE IS EMPLOYED THE NET EFFECT WOULD BE TO
REMOVE FROM CODE COVERAGE SUCH ENTITIES AS GOVERNMENT-OWNED
AIRLINES, POWER GENERATING FACILITIES, AND POSTS AND
TELEGRAPHS -- ALL IMPORTANT PROCUREMENT ENTITIES FOR US,
BUT NONE OF WHICH ARE PURCHASERS FOR "GOVERNMENTAL PUR-
POSES" OR FOR "CONSUMPTION IN GOVERNMENTAL USE."

B. TENDERING PROCEDURES, PARA. 2(A) -- IN SOME
INSTANCES IT IS POSSIBLE TO COMPLETE THE QUALIFICATION
PROCESS WITHIN THE TIMEFRAME OF A PARTICULAR PROCUREMENT.
HOWEVER, IN MANY MORE CASES SUCH A REQUIREMENT WOULD PLACE
AN UNWARRANTED BURDEN ON A PROCUREMENT SYSTEM IF THEY
COULD NOT COMPLETE THE PROCUREMENT PROCESS UNTIL ALL
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PAGE 03 STATE 165882

INTERESTED BIDDERS HAD TIME TO MEET THE QUALIFICATION
REQUIREMENTS. THIS IS PARTICULARLY TRUE IN CASES INVOLVING
HIGH TECHNOLOGY INDUSTRIES. WE WOULD SUGGEST A NORMA-
TIVE RULE TO THE EFFECT THAT SUCH QUALIFICATION BE COMPLETED
IN A REASONABLE TIME COMPATIBLE WITH THE EFFICIENT
OPERATION OF THE PROCUREMENT PROCESS. PARA. 2(D) PROVIDES
PROTECTION FOR SUPPLIERS WHO WISH TO QUALIFY FOR EVENTUAL
CONTRACT BIDS.

C. TENDERING PROCEDURES, PARA. 2(C) -- ALLIED TO THE
PROBLEM CONCERNING PARA. (A), WE NOTE THAT IN THIS PARA.
THAT CANADIANS HAVE CHANGED TEXT TO ELIMINATE "SUBSTANTIAL"
AS A MODIFIER OF "CONTROL." THIS MAY REFLECT CALCULATED
EFFORT ON PART OF CANADIANS TO AVOID CONFRONTATION WITH
OTHERS, SUCH AS EC, LEAVING TO ANNEX LIST COMPOSITION
EFFORT THE PROBLEM OF RESOLVING COVERAGE OF THE CODE.

D. TENDERING PROCEDURES, PARA. 5 -- THE PRIOR PARA. 4
IS THE HEART OF EX-ANTE PUBLICITY. WE DO NOT UNDERSTAND
THE VALUE OF PUBLICATION OF BIDDERS' LISTS AS A SUBSTITUTE
FOR EX-ANTE PUBLICITY. FURTHERMORE, PAST THINKING HOLDS
THAT ANNEX C WOULD LIST OFFICIAL GAZETTES OR SOME PUBLICA-

TION OF WIDE CIRCULATION, THE TYPE OF PUBLICATIONS WHICH
DON'T LEND THEMSELVES TO PUBLICATION OF THE KIND OF
EXTENSIVE DETAILED INFORMATION LIKE BIDDERS' LISTS.

E. TENDERING PROCEDURES, PARA. 10(D) -- THIS PARAGRAPH
SHOULD BE LIMITED TO OPEN TENDERS. SELECTIVE TENDERING IS
USED WHEN IT IS KNOWN IN ADVANCE THAT AWARD CANNOT LIKELY
BE MADE ON THE BASIS OF PRICE ALONE. EVEN IN THE UNUSUAL
CASE WHERE AWARD IS POSSIBLE ON PRICE ALONE, THIS IS NOT
KNOWN UNTIL AFTER OPENING OF TENDERS AND EVALUATION OF
TECHNICAL PROPOSALS. PUBLIC DISCLOSURE OF PRICES AT THE
TIME OF TENDER OPENING WOULD UNDERMINE THE INTEGRITY OF THE
NEGOTIATION PROCESS. IN ADDITION, PRICES OFFERED BY
UNSUCCESSFUL TENDERERS ARE CONSIDERED BUSINESS CONFIDENTIAL
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PAGE 04 STATE 165882

DENTIAL INFORMATION. ONLY THE WINNING PRICE IS PUBLISHED
AFTER AN AWARD IS MADE IN SELECTIVE TENDERING. FOR THE
ALLIED PROBLEM IN PARA. 10(G), AN AMENDMENT SHOULD BE
MADE LIMITING THIS PROVISION TO SELECTIVE TENDERING.
SUBSEQUENT NEGOTIATIONS WOULD NOT APPLY TO OPEN TENDERS.

F. TENDERING PROCEDURES, PARA. 11(A) -- WE WOULD
CONSIDER IT ESSENTIAL THAT THE PROVISIO CONTAINED IN THE
PRIOR CANADIAN DRAFT BE PUT BACK IN -- "PROVIDED THAT
HIGHLY SPECIALIZED TECHNICAL REQUIREMENTS MAKE IT IMPOSSIBLE
TO RESORT TO OPEN OR SELECTIVE TENDERING PROCEDURES."

G. TENDERING PROCEDURES, PARA. 12 -- UNLESS ANNEX C IS
CONCEIVED BY THE CANADIANS TO INCLUDE PUBLICATIONS OTHER
THAN THOSE IN WHICH EX-ANTE AND EX-POSTE PUBLICITY ARE TO
BE PUBLISHED, THIS WOULD BE AN UNWISE COURSE TO FOLLOW.
CANADIANS SHOULD CONSIDER EARLIER PLAN TO HAVE SUCH
MATERIALS SUPPLIED TO SIGNATORY STATES THROUGH THE
SECRETARIAT ESTABLISHED FOR THE CODE. THIS WOULD BE IN
ADDITION TO EACH GOVERNMENT UNDERTAKING TO PUBLISH IN ITS
OWN GOVERNMENTAL PUBLICATIONS.

H. WITH REGARD TO SURVEILLANCE/DISPUTE SETTLEMENT PART
AND OTHER PARTS OF CANADIAN DRAFT, WE NOTE ABSENCE OF
PROVISION FOR SUPPLIER INQUIRY RIGHTS. THIS OF COURSE
IMPACTS ON RESOLUTION OF DISPUTES BEFORE ESCALATION TO
BILATERAL LEVEL.

3. DEL SHOULD BE GUIDED IN ALL OTHER RESPECTS BY EARLIER
INSTRUCTIONS INCLUDING TPSC 77-20, 77-46, AND REF. (B).
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GOVERNMENT PROCUREMENT, DISCRIMINATION, COMMODITY AGREEMENTS, FOREIGN TRADE
Control Number: n/a
Copy: SINGLE
Sent Date: 15-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE165882
Document Source: CORE
Document Unique ID: 00
Drafter: JEH
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770253-0489
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770751/aaaabsda.tel
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Litigation Codes:
Litigation History:
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Message ID: d033c06a-c288-dd11-92da-001cc4696bcc
Office: ORIGIN STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 MTN GENEVA 5290, 77 STATE 86798
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 10-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1844013
Secure: OPEN
Status: NATIVE
Subject: INSTRUCTIONS FOR PLURILATERAL MEETING ON GOVERN- MENT PROCUREMENT (WEEK OF JULY 18)
TAGS: ETRD, MTN
To: GENEVA USMTN
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/d033c06a-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009